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JOHN PAUL.

LATE JUDGE OF THE DISTRICT COURT OF THE UNITED STATES FOR THE
WESTERN DISTRICT OF VIRGINIA.

JOHN PAUL, of Harrisonburg, Virginia, was born on June 30, 1839, near Ottobine, in the county of Rockingham, Virginia. He was the son of Peter Paul and Maria Whitmer—names coincident with the early settlement of the country. His paternal ancestors were of French extraction, having refuged, on account of religious persecution in the early part of the eighteenth century, from France to Germany, from whence came Jacob Paul to America in 1775, then in his seventeenth year. He enlisted in the Revolutionary Army, serving as a drummer-boy at the battle of Bunker Hill, and afterwards throughout the war as a private soldier. At the conclusion of the Revolutionary War, he emigrated to Rockingham county, Virginia, and his son, Peter Paul, was the father of John Paul. The Whitmers belong to the well-defined influx of Germans into the Valley of Virginia in the latter half of the eighteenth century, who, along with the sturdy Scotch-Irish emigration, laid the foundation of its progress and civilization. There is no more beautiful locality in the fruitful county of Rockingham, than "the hills of Ottobine," where the childhood of John Paul was spent, and where, now at work on the farm of his father, now attending the country school, he passed from boyhood to youth. Before he attained his majority, the yearning for a higher education possessed him, and after teaching school for a year, he entered Roanoke College in the fall of 1860, there to pursue his collegiate curriculum. Before the first session had ended, however, the great Civil War was flagrant, and John Paul in his 22d year enlisted as a private in the Salem Artillery, with which organization he remained throughout the first year of the war, and then joined the 5th Virginia Cavalry and was a lieutenant in Company I.

In August, 1862, during the second Manassas campaign, his



JOHN PAUL,
Late Judge of the U. S. District Court for the Western District of Virginia.

regiment made a night attack on Gen. Pope's headquarters at Catlett's Station, and he was severely wounded in the charge. He promptly returned to his command on his recovery, and continued in active service until the battles of the Wilderness, when he was captured and was confined a prisoner in Fort Delaware, until after the surrender. His conduct throughout the war is known to have been that of a brave and fearless soldier. He offered his life, a sacrifice, if need be, upon the altar of his country, and none, not the bravest of the brave did more.

At the re-opening of the University in the fall of 1865, John Paul, then in his 26th year, entered the Law class, conducted by John B. Minor, that greatest of teachers and best of men, and prosecuted his studies in this department of the University for two full sessions, graduating in June 1867, with his Bachelor's degree. He located at once at Harrisonburg, the county seat of his native county, and commenced the practice of his profession.

At the first general election of county officers, under the old constitution of 1869-70, held in November of the latter year, he was elected attorney for the Commonwealth for the county of Rockingham. This was the commencement of his political career. The position was one of importance, and, what was most agreeable to the ambitious young lawyer, brought him in contact with many influential citizens, thereby assisting him in laying the foundation of a warm and devoted personal following in his native county that adhered to him in the trying and difficult political course upon which he subsequently entered. It is hardly necessary to say that he discharged the duties of this office with marked success, filling the same until October, 1877, when he resigned in anticipation of his election to the senate of Virginia, for which office he was at that time a candidate upon a platform regarding the settlement of the State debt and the administration of State affairs, afterwards known as Readjuster. While commonwealth's attorney, his practice in civil cases was not extensive, except in the court of bankruptcy, where he enjoyed a large and lucrative employment.

The ambition of John Paul was distinctively political—he aspired to high political office, and enjoyed the atmosphere of political strife; and the campaign for Governor in 1877 on the State debt issue, coming on, he entered politics when in his 38th year as a supporter of General Mahone, and became a candidate for the State senate for Rockingham county. His campaign was spirited and

vigorous, arousing much enthusiasm among his many personal friends, and he was easily elected. In the following session of the General Assembly of 1877-78, he took a large part in the debates in the senate on the debt question, which culminated in the passage of the Barbour bill; and upon the veto of that measure by Governor Holliday, the Readjuster party rapidly approached independent organization. The congressional campaign of 1878 was now at hand, and the Readjusters determined to enter the field of national politics, and John Paul became a candidate for congress in the Seventh District, then represented by his friend and fellow townsman, Judge John T. Harris. He was not, however, the only aspirant from among the leaders of Readjustment. Capt. H. H. Riddleberger and Judge Henry C. Allen of Shenandoah, Dr. S. H. Moffett of Rockingham and Rev. John E. Massey of Albemarle, all prominent in the Readjuster movement, contested with him the leadership of the Readjusters. Gen. John Echols of Staunton also entered the contest as a "Debt-payer." It may be doubted whether in the history of Virginia politics, there was ever at the same time in one district, as many candidates for Congressional honors, of as much ability as in the Seventh District in 1878. The canvass commenced early in June of that year, and by September Judge Paul had easily distanced Capt. Riddleberger, Judge Allen and Dr. Moffett, and the Readjusters in the Valley were rapidly concentrating on him. Early in September, after a joint debate at Charlottesville—Mr. Massey's home—between that gentleman, Judge Paul and Judge Harris, the latter concluding the discussion, Mr. Massey withdrew from the canvass and the fight continued between Gen. Echols, Judge Harris and Judge Paul, until a few days before the election, when Gen. Echols withdrew, and Judge Harris was returned by a majority exceeding 1700. The legislative session of 1878-79 developed sharply the lines of divergence between the followers of Gen. Mahone and those antagonistic to him in the differences growing out of the debt settlement, known as the McCullough bill, leading to the Mozart Hall Convention, and a regular organization of the Readjuster party and its complete separation from the old Democratic conservative party. At the election for members of the general assembly in 1879, on the issues then formulated, Judge Paul was returned to the Virginia senate from his native county by an increased majority, and participated in the election of Gen.

Mahone to the Senate of the United States. The Presidential election of 1880 was now approaching, and the Readjusters, who had up to this time continued to call themselves Democrats, were forced to fall in line with the regular organization of that party, ally themselves with the Republicans, or occupy a middle ground. This latter course was adopted. Judge Paul being one of the leaders advocating the 7th of July Convention, held in Richmond on that date, when a full electoral ticket was placed in nomination independent of both the Hancock and Garfield tickets, became without opposition in his party, its candidate for Congress in the Seventh District in 1880. Judge Henry C. Allen of Shenandoah declining to follow Gen. Mahone in the movement now clearly tending to a coalition with the Republican party, accepted the nomination for Congress at the hands of the Democratic convention, but was defeated by Judge Paul by a majority exceeding 700, after an exceedingly hard fought and ably conducted canvass. Taking his seat in Congress in December, 1871, just after the Readjuster-Republican coalition ticket for Governor, headed by Col. Wm. E. Cameron of Petersburg, had carried the State, he served while a member of the House of Representatives, on the Committee on Elections, and during the consideration in the House of the Mackay-Dibble contested election case, he delivered on May 30, 1882, a set speech, in which he explained the position and purposes of his party in Virginia. In 1882, he was again the nominee of his party for Congress, and was opposed by Governor Charles T. O'Ferrall, as the Democratic candidate. The certificate of election was given to him, but his election was contested by Gov. O'Ferrall, who was awarded the seat after Judge Paul had resigned from the House of Representatives to accept the position of United States District Judge for the Western District of Virginia, which office, President Arthur, at the instance of Gen. Mahone, had tendered him in the spring of 1883, upon the death of the incumbent, Judge Alexander Rives. After much hesitation, reluctant even to leave the uncertain field of politics for the life tenure of the Federal judiciary, he had finally accepted, and taking the oath of office on September 5, 1883, he at once entered upon the discharge of his duties, filling the position until his death.

During his service on the bench, Judge Paul made a number of public addresses, notably, one on the occasion of the laying of the corner stone of the beautiful new county courthouse of his native

county, on October 15, 1896—a paper as valuable for its exhaustive historical research, as it is creditable to the industry and eloquence of its author.

Upon his acceptance of the judgeship, there was much speculation as to how he would discharge the delicate and difficult duties of the position. Fresh from the fiercest political controversy known in Virginia since the war, an extreme partisan, elevated to the bench at a time when the phrase, "We are for Arthur, because Arthur is for us" seemed to be expressive of the political morality of the party to which he belonged, Judge Paul was not long in giving evidence of the standards guiding him in the performance of the duties of this high position, or of disclosing his ability to discharge them. He applied himself with renewed vigor to the study of the science of jurisprudence, and soon strikingly illustrated the fact that in our country, many of the ablest, purest and most impartial judges are drawn from among the intensest partisans. All traces of his previous political prejudices passed away upon his advent to the bench, and he became and continued to the last, an able, honest, fearless and just judge.

I shall not attempt here a survey of Judge Paul's labors upon the bench, either by a review of the great number of cases in which he handed down opinions, as well when sitting on the Circuit Court of Appeals, as when on Circuit, or by a recital of the many questions of first impression, considered and decided by him, or of the cases constantly coming up for decision in which the ascertainment and application of distinct principles of law became necessary.

Nor need the character of that work be recalled, for our emulation and admiration. It is known alike to the Bar and to his brethren of the Bench. It is found in the depositories of our jurisprudence, to lighten the labors of both, and to remain a monument to his energy, his ability, his strong judicial grasp and his love of right and justice. The bare fact is stated, however, when it is said of him, what may be said of no man more truly, that his mental processes were always absolutely honest. His investigations, his reflections, his reasoning, proceeded from motives of the highest honor. He did his work not from the lofty stimulus of duty only, nor because upon him alone was its performance imposed, but as well for the reason, that he loved truth and honor, and revered justice as though it were his "conscience and his king." To him the question, is it right, is it just, came with ab-

sorbing gravity. With this inquiry did he challenge all propositions, as he gladly dedicated his highest, noblest effort to the service of his country, in taking part in its administration of justice. Not from the bench alone, but in contact with his fellow man, and in public addresses as well, did he love to inculcate the sentiment, dear to his heart, "Justice is the common concern of mankind." Whether upon the floor of the National Congress, advocating the cause of honest elections, or among his own people, with whom, despite the loneliness of judicial station, he ever maintained affectionate relations, he loved to dwell upon the beauty and holiness of justice. And lest what has been said in this regard may seem due perhaps to the partiality of friendship, his own words delivered on the occasion of laying the corner-stone of the new court-house in the county of his nativity, afford ample corroboration:

"May those," said he, "who shall preside in this Temple of Justice always realize that 'Justice is the common concern of mankind,' that all, *all*, the rich and the poor, the strong and the weak, the prosperous and the failing, the high and the low, the well-to-do in comfortable homes, and the paupers in their hovels, are all equally entitled to the protection of the laws and to their fair, honest, fearless and just administration. And may it ever be said of them, that they judged in honor and in truth, and that their judgments were ever guided by the spirit of Righteousness and founded in Justice."

As may be inferred from what has been said, Judge Paul's lack of advantages in early life, the interruption of his academic training, the war ensuing, and the struggle for bare subsistence, immediately following, retarded his acquisition of knowledge—but only for a time. He soon became deeply versed not only in the science of jurisprudence, but in the political and constitutional history of the country as well, familiar with the best of our literature, and well informed as to the progress of the world. And as his knowledge grew, so did his sympathies extend, and the spirit of tolerance, ever deep-seated in his nature, enlarge and broaden, until it seemed that charity, benevolence and urbanity so enveloped him, as to leave no space for prejudice or dogmatism. The clearer understanding of equitable principles, which comes with expanded moral perceptions, grew with him from more to more, until his heart and mind were quick to respond to their intimation. And to one so keenly

sensitive to the slightest suggestion of equity, argument were indeed superfluous.

Judges Paul's demeanor upon the bench will long be remembered by the Bar who practised before him. An attention that seldom showed weariness under any provocation, a courtesy and kindness rarely found, a generous consideration for counsel under the most trying circumstances, and a promptness in the dispatch of business, characterised his discharge of the onerous duties of the position and endeared him alike to the officers of the court, to juries, witnesses and members of the bar. With all, a dignity evoking respect and deference, without ever manifesting the slightest austerity.

At the commencement of his service upon the bench, Judge Paul was no doubt inclined to a rather strict construction of the powers of the National government, but as his study and reflection upon the great chart of its authority matured, he came to be among the many who venerate the work of Virginia's greatest jurist, and his reverence for the name and fame of the incomparable Marshall was second to none in this broad land.

Few men were more genuinely public-spirited than John Paul. In all that made for the advancement of his fellow-citizens, of the people everywhere, he took a vital interest, and none contributed more than he within the limits of his opportunities to the welfare of his community. Early in life, he gave special study to the system of public education, and always manifested great solicitude for its promotion and development. Not a few are those yet living who recall the power and earnestness, one might say pathos, put forth in his speeches when in politics, in pleading the cause of the free-school system in Virginia. He placed a high estimate on the power of public discussion of all questions affecting the rights and interests of the people, whether in the press, at the fireside, or on the platform. In the work of the Bench and of the Bar of the country, and especially of Virginia, he was deeply interested. He noted with glad approval the advent of the *LAW REGISTER*, and welcomed the organization of the Bar Association; of the law requiring examination of applicants for admission to the bar—indeed, of all movements designed to promote the science of jurisprudence and the elevation of the profession.

Judge Paul never wearied of his work, approaching it always with readiness and zest—a disposition finding expression even in the last trying months of his life, as when, though broken in

strength, but with spirit undaunted, he remarked as he made request for another to hold his approaching term, that he was glad to have always been able to hold his courts—that he was proud of his district, proud of the bar practising in it, and it was hard not to be able to go on with his duties—for he had looked forward to years of active continuance on the bench.

Any sketch of John Paul would be deficient, which failed to refer to his keen sense of humor or his companionable nature—that indescribable power of diffusing a feeling of nearness—and his tenderness of heart, whether exhibited on the bench, as when with tearful voice and ill-concealed emotion, he softens within the limits of the law the sentence to the old Confederate confessing his guilt, or shown in his sympathy and assistance to youth in the struggles of early life, as many in this and other States bear witness in grateful remembrance. He was open, frank, warm-hearted, considerate, whole-souled, and for his bounty,

“There was no winter in’t; an autumn ’twas
That grew the more by reaping.”

An ardent lover of nature and her thousand charms, he paid her tribute in a lifelong cultivation of flowers and trees and shrubs, and in the finer feelings that come to those to whom the presence of her mysteries is joy and gladness as well as reverence and awe.

In 1874, John Paul was united in marriage to Kate Seymour Green, daughter of Mr. Charles H. Green of Warren county, Virginia, to whom were born seven children, four sons and three daughters, and she, with three of the former and all of the latter, survives him. It is no intrusion into the sanctity of their home—for it is known to all—to say that his married life was ideal; nor to add, that to none so much as to the one nearest and dearest to him, was he indebted for all that was highest and best in life and thought. To her encouragement and sympathy, quickened by the keen insight of love, could be traced the most potent influences upon his character and career.

A disease of the heart developing less than half a year before bringing his life to a close, on November 1, 1901, was long enough to try to the uttermost, the patience and the courage of this brave and faithful man. And right nobly did he bear its agony; for with a soldier’s fortitude, and a Christian’s faith, he “embraced the purpose of God” and passed “to where beyond these voices there is peace.”

In the sacred soil of his beloved mother, Virginia, precious with the dust of statesmen and patriots, of soldiers and scholars, of honor and eloquence, this learned, this loyal and this loving son was laid to rest;

"White-souled, clean-handed, pure of heart."

Harrisonburg, Va.

JOHN T. HARRIS.

**ACKNOWLEDGMENT OF A DEBT IN A DEED OF TRUST
AS A NEW PROMISE, REPELLING THE STATUTE
OF LIMITATIONS.**

It is proposed in this paper to discuss the single question whether *the acknowledgment of a certain sum as an existing legal liability, in an ordinary deed of trust for the benefit of creditors, constitutes a new promise under Virginia Code, section 2922, to repel the bar of the statute of limitations.*

It is supposed that the preamble of the deed recites the debtor's desire to pay his debts so far as he is able; that the property is conveyed to a trustee to be disposed of by him, and the proceeds applied to the payment of the debts in the order set out in the schedule; that the deed contains no release clause; that suit is brought upon the original promise within five years from the date of the deed, and, in answer to a plea of the statute of limitations, the acknowledgment is pleaded and shown.

Whether a debt barred by the statute of limitations at the date of the deed would be revived, or whether the new promise is under seal or not, are questions that the limits of this paper forbid to be discussed here.

The words of the statute,¹ after providing that suit may be brought either on the original cause of action or on the new promise, are:

"An acknowledgment in writing as aforesaid, from which a promise of payment may be implied, shall be deemed to be such promise in the meaning of this section."

This clause, in its present wording, first appears in the Code of 1849, and is the codification of an act passed in 1838.²

It is too well settled to need citation of authority that the re-

¹ Virginia Code, section 2922.

² Acts 1838, p. 73.